

MONTANA LEGISLATIVE HISTORY

Chapter 515 19 95

Bill H 89 S _____

Original bill & history ☒ C

H. Committee on Human Services Aging

Hearing Date(s) Jan 09 ☒ C

Feb 06 ☒ C

Feb 08 ☒ C

_____ ☐ C

Date Out Feb 10 ☒ C

S. Committee on State Administration

Hearing Date(s) Mar 07 ☒ C

Mar 13 ☒ C

_____ ☐ C

_____ ☐ C

Mar 17 ☒ C

Did this bill originate in an interim committee? ☐ Yes ☐ No

Committee _____

Report _____

1/16 FISCAL NOTE PRINTED
 1/23 REVISED FISCAL NOTE RECEIVED
 3/01 REVISED FISCAL NOTE PRINTED
 3/02 HEARING
 3/02 TABLED IN COMMITTEE
 3/24 MISSED TRANSMITTAL DEADLINE FOR 67TH DAY
 DIED IN COMMITTEE

HB 89 INTRODUCED BY PECK

GENERALLY REVISE VITAL STATISTICS LAWS TO STANDARDIZE
 PROCEDURES AND TO CONFORM TO NATIONAL STANDARDS
 BY REQUEST OF THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL
 SCIENCES

1/04	INTRODUCED		
1/04	FIRST READING		
1/04	REFERRED TO HUMAN SERVICES & AGING		
1/05	FISCAL NOTE REQUESTED		
1/09	HEARING		
1/10	FISCAL NOTE RECEIVED		
1/10	FISCAL NOTE PRINTED		
2/06	TABLED IN COMMITTEE		
2/10	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/13	2ND READING PASSED AS AMENDED	78	18
2/15	3RD READING PASSED	85	13
	TRANSMITTED TO SENATE		
2/20	FIRST READING		
2/20	REFERRED TO STATE ADMINISTRATION		
3/07	HEARING		
3/15	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
3/20	2ND READING CONCURRED AS AMENDED	50	0
3/21	3RD READING CONCURRED	50	0
	RETURNED TO HOUSE WITH AMENDMENTS		
3/31	2ND READING AMENDMENTS CONCURRED	90	6
4/03	3RD READING AMENDMENTS CONCURRED	88	10
4/05	SIGNED BY SPEAKER		
4/06	SIGNED BY PRESIDENT		
4/07	TRANSMITTED TO GOVERNOR		
	RETURNED TO HOUSE WITH GOVERNOR'S PROPOSED AMENDMENTS		
4/12	2ND READING GOVERNOR'S AMENDMENTS CONCURRED	97	3
4/13	3RD READING GOVERNOR'S AMENDMENTS CONCURRED	91	6
	SENATE		
4/12	2ND READING GOVERNOR'S AMENDMENTS CONCURRED	49	0
4/13	3RD READING GOVERNOR'S AMENDMENTS CONCURRED	50	0
4/14	SIGNED BY SPEAKER		
4/18	SIGNED BY PRESIDENT		
4/18	TRANSMITTED TO GOVERNOR		
4/25	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 515		
	EFFECTIVE DATE: 01/01/96		

HB 90 INTRODUCED BY FELAND

EXEMPT THE FIRST 3 BARRELS A DAY OF STRIPPER WELL PRODUCTION
 FROM THE STATE SEVERANCE TAX IF THE AVERAGE PRICE PER

1
2 INTRODUCED BY Peck House BILL NO. 89

3 BY REQUEST OF THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE VITAL STATISTICS LAWS TO
6 STANDARDIZE PROCEDURES AND TO CONFORM TO NATIONAL STANDARDS; CLARIFYING THE
7 INFORMATION AVAILABLE FROM THE SYSTEM OF VITAL STATISTICS; REVISING BIRTH REGISTRATION
8 REQUIREMENTS; REVISING PROCEDURES AND CRITERIA FOR ISSUING A DELAYED OR ALTERED BIRTH
9 CERTIFICATE; REVISING THE JUDICIAL PROCEDURE FOR ESTABLISHING THE FACTS OF BIRTH;
10 REVISING THE LAWS GOVERNING CERTIFICATES OF ADOPTION AND ANNULMENT OF ADOPTION;
11 PROVIDING FOR CERTIFICATES OF FOREIGN BIRTH; REVISING THE LAWS FOR CERTIFICATES OF BIRTH
12 FOLLOWING ADOPTION, LEGITIMATION, OR ESTABLISHMENT OF PATERNITY; REVISING STANDARDS
13 FOR PRESERVING VITAL RECORDS; REVISING THE CONTENT OF VITAL RECORDS; AMENDING SECTIONS
14 37-27-321, 40-8-126, 50-15-101, 50-15-102, 50-15-103, 50-15-111, 50-15-204, 50-15-303, 50-15-403,
15 50-15-405, AND 50-16-542, MCA; REPEALING SECTIONS 50-15-110, 50-15-112, 50-15-113, 50-15-201,
16 50-15-205, AND 50-15-206, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE."

17
18 STATEMENT OF INTENT

19 A statement of intent is required for this bill because the bill gives the department of health and
20 environmental sciences authority to adopt administrative rules.

21 The legislature intends that the rules:

- 22 (1) address the process for establishing and maintaining a statewide system of vital statistics and
23 vital records;
- 24 (2) define persons who may obtain copies of vital records and the showing necessary to obtain
25 vital records;
- 26 (3) establish which persons may prepare or issue certified copies of certificates of birth or vital
27 records;
- 28 (4) establish the process and scope of disclosure of information to the public and governmental
29 agencies as well as adequate standards for security and confidentiality of vital records;
- 30 (5) establish a system for preservation or disposal of vital records;

- (6) establish the process and guidelines for registration of births;
- (7) establish the process for establishing, maintaining, or dismissing applications for delayed certificates of birth;
- (8) establish forms necessary to track vital statistics by courts or other governmental entities;
- (9) establish a system of issuance and maintenance of certificates of birth following adoption, legitimation, or establishment of paternity;
- (10) establish a system for issuance and maintenance of records of dissolution or annulment of marriage; and
- (11) establish a system for the issuance and maintenance of certificates of adoption and annulment of adoption.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 37-27-321, MCA, is amended to read:

"37-27-321. Filing of birth certificate. (1) When a birth occurs with a licensed direct-entry midwife in attendance, the direct-entry midwife shall prepare and file a birth certificate, as required by ~~50-15-201~~ [section 11], with the department of health and environmental sciences ~~within 30 days of the birth of the newborn.~~

(2) Failure of a direct-entry midwife to prepare and file the birth certificate constitutes grounds for the suspension or revocation of a license granted under this chapter."

Section 2. Section 40-8-126, MCA, is amended to read:

"40-8-126. Confidentiality of record and proceedings. (1) Unless the court ~~shall~~ orders otherwise ~~order~~, all hearings held in proceedings under this part ~~shall be~~ are confidential and ~~shall~~ must be held in closed court without admittance of any person other than interested parties and their counsel.

(2) All papers and records pertaining to the adoption ~~shall~~ must be kept as a permanent record of the court and withheld from inspection. ~~No~~ A person ~~shall~~ may not have access to ~~such~~ the records, except:

(a) for good cause shown, on order of the judge of the court in which the decree of adoption was entered; or

(b) as provided in ~~50-15-206~~ sections 7 and 8.

(3) All files and records pertaining to ~~said the~~ adoption proceedings in the county departments of public welfare, the department of social and rehabilitation services, the department of family services, or any authorized agencies ~~shall be~~ are confidential and must be withheld from inspection, except upon order of court for good cause shown or as provided in ~~50-15-206~~ sections 7 and 8."

Section 3. Section 50-15-101, MCA, is amended to read:

"50-15-101. Definitions. Unless the context requires otherwise, in parts 1 through 4, the following definitions apply:

(1) "Board" means the board of health and environmental sciences provided for in 2-15-2104.

(2) "Dead body" means a ~~lifeless~~ human body or parts of a human body from which it reasonably may be concluded that death occurred ~~recently~~.

(3) "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

(4) "Dissolution of marriage" means a marriage terminated pursuant to Title 40, chapter 4, part 1.

(5) "Fetal death" means ~~a birth after 20 weeks of gestation, or before 20 weeks of gestation if the fetus weighs more than 500 grams at the time of delivery, that is not a live birth~~ death of the fetus prior to the complete expulsion or extraction from its mother as a product of human conception, notwithstanding the duration of pregnancy. The death is indicated by the fact that after expulsion or extraction, the fetus does not breathe or show any other evidence of life, such as beating of the heart, pulsation of the umbilical cord, or definite movement of voluntary muscles. Heartbeats are distinguished from transient cardiac contractions. Respirations are distinguished from fleeting respiratory efforts or gasps.

(6) "Final disposition" means the burial, interment, cremation, removal from the state, or other authorized disposition of a dead body or fetus.

~~(6)~~(7) "Invalid marriage" means a marriage decreed by a district court to be invalid for the reasons contained in 40-1-402.

(8) "Legitimate" means to place a child born before marriage of the child's parents in the same status as children born during marriage.

~~(7)~~(9) "Live birth" means the ~~birth of a child who shows evidence of life after being entirely outside the mother~~ complete expulsion or extraction from the mother as a product of human conception,

1 notwithstanding the duration of pregnancy. The birth is indicated by the fact that after expulsion or
2 extraction, the child breathes or shows any other evidence of life, such as beating of the heart, pulsation
3 of the umbilical cord, or definite movement of voluntary muscles. Heartbeats are distinguished from
4 transient cardiac contractions. Respirations are distinguished from fleeting respiratory efforts or gasps.

5 ~~(8)~~(10) "Local registrar" means a person appointed by the department to act as its agent in
6 administering this chapter in the area set forth in the letter of appointment.

7 ~~(9)~~(11) "Person in charge of ~~interment disposition of a dead body~~" means a ~~person~~ funeral director
8 licensed under Title 37, chapter 19, an employee acting for a funeral director, or a person who first
9 assumes custody of a dead body or fetus and who places or causes to be placed a dead body or the ashes
10 after cremation in a grave, vault, urn, or other receptacle or otherwise disposes of the body or fetus.

11 ~~(10)~~(12) "Physician" means a person legally authorized to practice medicine in this state.

12 (13) "Registration" means the process by which vital records are completed, filed, and incorporated
13 into the official records of the department.

14 (14) "Research" means a systematic investigation designed primarily to develop or contribute to
15 generalizable knowledge.

16 (15) "System of vital statistics" means the registration, collection, preservation, amendment, and
17 certification of vital records. The term includes the collection of reports required by this chapter and related
18 activities, including the tabulation, analysis, publication, and dissemination of vital statistics.

19 (16) "Vital records" means certificates or reports of birth, death, fetal death, marriage, and
20 dissolution of marriage and related reports.

21 ~~(11)~~(17) "Vital statistics" ~~includes the registration, preparation, transcription, collection, compilation,~~
22 ~~and preservation of data pertaining to births, adoptions, legitimations, deaths, fetal deaths, marital status,~~
23 ~~and incidental supporting data~~ means the data derived from certificates or reports of birth, death, fetal
24 death, induced termination of pregnancy, marriage, and dissolution of marriage and related reports."

25
26 **Section 4.** Section 50-15-102, MCA, is amended to read:

27 **"50-15-102. Statewide system of vital statistics to be established.** The department shall establish
28 a statewide system of vital statistics and adopt rules for gathering, recording, using, amending, and
29 preserving vital statistics and vital records. The department may adopt rules for the proper administration
30 of the system of vital statistics."

1 **Section 5.** Section 50-15-103, MCA, is amended to read:

2 **"50-15-103. Duties of department.** The department shall:

3 (1) divide the state into registration districts and change districts as necessary;

4 ~~(2) gather, record, use, and preserve vital statistics;~~

5 ~~(3) enforce rules adopted by the department for gathering, recording, using, and preserving vital~~
6 ~~statistics;~~

7 ~~(4) give instructions and prescribe forms for gathering, recording, preserving, and using vital~~
8 ~~statistics~~

9 (2) promulgate rules necessary to implement this chapter;

10 (3) administer and enforce the provisions of this chapter and rules adopted to implement this
11 chapter;

12 (4) direct, supervise, and control the activities of all persons when they are engaged in activities
13 pertaining to the operation of the system of vital statistics;

14 (5) conduct training programs to promote uniformity of policy and procedures throughout the state
15 in matters pertaining to the system of vital statistics;

16 (6) prescribe, furnish, and distribute forms required by this chapter or rules adopted pursuant to
17 this chapter or prescribe other means for the transmission of data that will accomplish complete and
18 accurate reporting and registration; and

19 (7) prepare and publish reports of vital statistics of this state."

20
21 **Section 6.** Section 50-15-111, MCA, is amended to read:

22 **"50-15-111. Certified copy fee.** (1) The department shall prescribe, by rule, a fee ~~of not less than~~
23 ~~\$5~~ for:

24 (a) a certified copy of certificates or records;

25 (b) a search of files or records when a copy is not made;

26 (c) a copy of information provided for statistical or administrative purposes as allowed by law;

27 (d) the replacement of a birth certificate subsequent to adoption, legitimation, paternity
28 determination or acknowledgment, or court order;

29 (e) filing a delayed registration of a vital event;

30 (f) the amendment of a vital record, after 1 year from the date of filing; and

1 (g) other services specified by this chapter or by rule.

2 (2) Fees received for a certified copy of a certificate or a search of files shall under subsection (1)
3 must be deposited in the state special revenue fund to be used by the department for:

4 (a) the maintenance of indexes to and costs for vital records;

5 (b) the preservation of vital records; and

6 (c) the modernization and automation of the system of vital statistics."

7 •

8 **NEW SECTION.** **Section 7. Copies from system of vital statistics.** (1) Except as provided in
9 subsections (4), (6), and (7), the department and county clerk and recorders shall, upon receipt of an
10 application, issue a certified copy of a vital record or a part of a vital record to the registrant, the
11 registrant's spouse, children, parents, or guardian, or an authorized representative. Other individuals may
12 obtain certified copies when the individual demonstrates that the record is needed for the determination or
13 protection of the individual's personal or property rights. The department shall adopt rules to further define
14 those who may obtain copies of vital records filed under this chapter.

15 (2) All applications, forms, and procedures used in the issuance of certified copies of vital records
16 in the state must be uniform and prepared or approved by the department. All certified copies must contain
17 security features that deter the document from being altered, counterfeited, duplicated, or simulated
18 without ready detection that there have been these changes to the document.

19 (3) Each copy issued must show the date of registration. Copies issued from amended records
20 must be marked and must show the effective date of the amendment. Copies issued from delayed records
21 must be marked, must include the date of registration, and must contain a statement of the evidence used
22 to establish the delayed certificate. A copy issued of a certificate of foreign birth must indicate the fact
23 of foreign birth and the date of birth (if known), must show the actual place of birth, and must state that
24 the certificate is not proof of United States citizenship for the adoptive child.

25 (4) A certified copy or other copy of a death certificate containing information or data that would
26 identify any person or institution named in a certificate or report and the cause of death information may
27 not be issued, except as follows:

28 (a) upon specific request of the spouse, children, parents, or other next of kin of the decedent or
29 their respective authorized representatives, as specified by department rule;

30 (b) when a documented need for the cause of death to establish a legal right or claim has been

1 demonstrated, as specified by department rule;

2 (c) when the request for the copy is made by or on behalf of a person or entity that provides
3 monetary benefits to the decedent's survivors or beneficiaries, as may be specified by department rule;

4 (d) upon specific request by federal, state, or local agencies for research or administrative purposes
5 and when approved for release by the department;

6 (e) when needed for research activities and approved for release by the department; or

7 (f) upon receipt by the department of an order directed to the department from a court of
8 competent jurisdiction ordering the release.

9 (5) A certified copy of a vital record or any part of a vital record, issued in accordance with
10 subsections (1) through (3), must be considered for all purposes the same as the original and is prima facie
11 evidence of the facts stated in the original. The admissibility of a certificate or vital record filed more than
12 1 year after the event or after a corrective record is filed, of a vital record that has been amended, or of
13 a certificate of foreign birth must be determined by the judicial or administrative body or official before
14 whom the certificate is offered as evidence.

15 (6) This section may not be construed to permit disclosure of confidential information contained
16 in a birth certificate for medical or health use or of information for statistical purposes only contained in a
17 certificate of marriage or report of dissolution of marriage unless disclosure is specifically authorized by law
18 for statistical or research purposes or unless ordered by a court.

19 (7) (a) When the department receives information that a certificate may have been registered
20 through fraud or misrepresentation, it shall withhold issuance of the certificate or any copy of that
21 certificate pending issuance of an order after an administrative contested case hearing before the
22 department to determine whether fraud or misrepresentation has occurred.

23 (b) The hearing provided for in subsection (7)(a) must be conducted pursuant to the Montana
24 Administrative Procedure Act. In the proceeding, the department shall notify the registrant or the
25 registrant's authorized representative and provide the registrant or the representative the opportunity to be
26 heard.

27 (c) If, upon conclusion of the hearing, fraud or misrepresentation is not found, the department may
28 issue the certificate or copies of the certificate in question.

29 (d) If, upon conclusion of the hearing, fraud or misrepresentation is found, the department may not
30 register the certificate unless ordered to do so by a court.

1 (e) An affected person may appeal the department's decision to the district court as provided in
2 Title 2, chapter 4, part 7.

3 (8) A person may not prepare or issue any certificate that purports to be an original, certified copy,
4 or copy of a vital record, except as authorized in this chapter or rules adopted to implement this chapter.

5 (9) The department may, by rule, prescribe details for the hearing and appellate procedures
6 contained in this section.

7
8 **NEW SECTION. Section 8. Disclosure of information from vital records or vital reports -- rules.**

9 (1) It is the policy of the state to protect the integrity of vital records and vital reports, to ensure their
10 proper use, and to ensure the efficient and proper administration of the system of vital statistics. In
11 furtherance of the policy, it is unlawful for any person to permit inspection of or to disclose information
12 contained in vital records or in vital reports or to copy or issue a copy of all or a part of a record or report
13 unless authorized by this chapter, by administrative rule, or by order of a court of competent jurisdiction.
14 Rules adopted under this chapter must provide for adequate standards of security and confidentiality of vital
15 records.

16 (2) The execution of a research agreement that protects the confidentiality of the information
17 provided to a researcher in response to a written request is required for disclosure of information that may
18 identify a person or institution named in any vital record or report. This agreement must be made in
19 compliance with this chapter or rules adopted to implement this chapter. Each agreement must prohibit
20 the release by the researcher of any information that might identify a person or institution, other than
21 releases that may be provided for in the agreement.

22 (3) This section does not prohibit the release of information or data that does not identify a person
23 or institution named in a vital record or report.

24 (4) A challenge to a decision of a custodian of vital records to refuse disclosing information from
25 records, as prescribed by this section and rules issued to implement this section, must be made before the
26 department in the case of a county clerk and recorder and to a district court in the case of the department.
27 A challenge before the department must be in the form of a contested case pursuant to the Montana
28 Administrative Procedure Act. An appeal of the department's decision to district court must be made by
29 filing an original action pursuant to the Montana Rules of Civil Procedure.

30 (5) One hundred years after the date of birth or 50 years after the date of death, marriage, or

dissolution of marriage, the records of these events in the custody of the department are available to the public without restriction. The department shall adopt rules that provide for the continued safekeeping of the records.

(6) The department may provide the national center for health statistics or a successor agency with copies of records, reports, or data from the system of vital statistics that are required for national statistics. The department shall enter into an agreement with the center, indicating the scope of disclosure of information, as required by this chapter or rules implementing this chapter, concerning the use of records, reports, or data for statistical or research purposes. The agreement must set forth the financial support to be provided by the center for the collection, processing, and transmission of the records, reports, or data. Upon written request of the center, the department may approve, by amendment to the agreement, additional statistical or research uses of the records, reports, or data supplied under the agreement.

(7) Federal, state, and local governmental agencies may, subject to this chapter and rules implementing this chapter, upon request, be furnished copies of records or data from the system of vital statistics if the copies or data is used solely in the conduct of the agency's official duties.

(8) Subject to this chapter and rules implementing this chapter, the department may, by agreement, transmit copies of records and other reports required to be compiled by this chapter to offices of vital statistics outside this state when the records or reports concern residents of those jurisdictions or persons born in those jurisdictions. The agreement must specify the statistical and administrative purposes for which the records may be used, and the agreement must provide instructions concerning proper retention, confidentiality requirements, and disposition of the copies. Copies received by the department from offices of vital statistics in other states must be handled as provided for in this subsection.

NEW SECTION. Section 9. Preservation of vital records. To preserve vital records, the department may prepare typewritten, photographic, electronic, or other reproductions of certificates, vital records, or reports kept by the department. The reproductions when certified and approved by the department must be accepted as the original records, and the documents from which permanent reproductions have been made may be disposed of as provided by department rule.

NEW SECTION. Section 10. Content of certificates, records, and reports. (1) In order to promote and maintain nationwide uniformity in the system of vital statistics, the department, in the preparation of

1 the forms of certificates, vital records, or reports required by this chapter or rules adopted under this
2 chapter, may include the elements in forms and the forms recommended by the national center for health
3 statistics for implementing a system of vital statistics.

4 (2) Each certificate, record, report, and other document required by this chapter must be prepared
5 in a format approved by the department. All vital records must contain the date of filing.

6 (3) Information required in certificates, forms, records, or reports authorized by this chapter may
7 be filed, verified, registered, and stored by photographic, electronic, or other means as prescribed by the
8 department.

9
10 **NEW SECTION. Section 11. Birth registration.** (1) A certificate of birth must be filed as specified
11 in this section with the department for each live birth that occurs in this state. Unless otherwise directed
12 by the department, the certificate must be filed within the time prescribed by the department by rule after
13 the birth. The birth certificate must be registered if it has been completed and filed in accordance with this
14 section and rules adopted to implement this section.

15 (2) If a birth occurs in a health care facility, the birth certificate must be completed and filed by
16 the attending physician or the physician's designee.

17 (3) If a birth occurs in or en route to a health care facility, the person in charge of the facility or
18 the person's authorized designee shall obtain the personal data concerning the newborn child, prepare the
19 certificate, and certify that the child was born alive at the place, at the time, and on the date stated.
20 Certification may be by signature or by an approved electronic process. The person referenced in this
21 subsection shall file the certificate as directed in subsection (1). The physician or other person in
22 attendance at the birth shall provide the medical information required by the certificate within 72 hours after
23 the birth.

24 (4) The department shall, by rule, determine what evidence may be required to establish the facts
25 of birth if the birth occurs at a place other than a health care facility. In accordance with rules promulgated
26 by the department, the certificate must be prepared and filed by one of the following persons in the
27 indicated order of priority in subsections (4)(a) through (4)(f):

28 (a) the physician or the physician's designee in attendance at or immediately after the birth;

29 (b) a person in attendance at or immediately after the birth;

30 (c) the father or the mother;

(d) in the absence of the father and the inability of the mother, the person in charge of the premises where the birth occurred;

(e) a midwife licensed pursuant to Title 37, chapter 27; or

(f) the local registrar, if 50-15-202 applies.

(5) When a birth occurs on a moving conveyance within the United States and the newborn child is first removed from the conveyance in this state, the birth must be registered in this state by a person listed in subsection (4) and the place where the child is first removed from the conveyance is considered the place of birth. When a birth occurs on a moving conveyance while in international waters or air space or in a foreign country or its air space and the child is first removed from the conveyance in this state, the birth must be registered by a person listed in subsection (4) in this state, but the certificate must indicate the actual place of birth insofar as the place can be determined.

(6) For the purposes of birth registration, the woman who gives birth to the child is considered to be the mother, unless otherwise provided by state law or determined by a court of competent jurisdiction prior to the filing of the birth certificate. Information about the father must be entered as provided in subsection (7).

(7) (a) If the mother was married at the time of conception or birth or between conception and birth, the name of the husband must be entered on the certificate as the father of the child, unless:

(i) other paternity has been determined by a court of competent jurisdiction;

(ii) the mother and the husband execute joint or separate affidavits attesting that the husband is not the father of the child. Affidavits must be notarized, and signatures of the mother and of the husband must be individually notarized on any joint affidavit. If affidavits are filed, information about the father must be omitted from the certificate.

(iii) the mother executes an affidavit attesting that the husband is not the father and names a putative father, the putative father executes an affidavit attesting paternity, and the husband executes an affidavit denying paternity. Affidavits may be joint or individual or a combination of joint and individual affidavits. Each signature on an affidavit must be individually notarized. If all affidavits are filed, the putative father must be shown as the father on the certificate.

(b) If the mother was not married at the time of conception or birth or between conception and birth, the name of the father may not be entered on the certificate without an affidavit of paternity signed by the mother and the person to be named as the father.

1 (c) If paternity of a child is determined by a court of competent jurisdiction, the name of the father
2 and surname of the child must be entered on the certificate of birth in accordance with the finding and
3 order of the court.

4 (d) If the father is not named on the certificate of birth, information about the father may not be
5 entered on the certificate.

6 (e) Affidavits required under this subsection (7) must be filed with the department.

7 (8) Either parent of the child, or another informant, shall verify the accuracy of the personal data
8 to be entered on the certificate in order to permit the filing of the certificate within the time prescribed in
9 subsection (1).

10 (9) A certificate of birth filed after the time prescribed in subsection (1) but within 1 year from the
11 date of birth must be registered by the natural parents, the adoptive parents, or the person having legal
12 custody of the child, on the standard form of live birth certificate in the manner prescribed in this section
13 and by rule. The certificate may not be designated as delayed. The department may require additional
14 evidence in support of the facts of birth.

15
16 **Section 12.** Section 50-15-204, MCA, is amended to read:

17 **"50-15-204. Delayed or amended birth certificate.** (1) ~~(a) After the time prescribed by the~~
18 ~~department, a person born in this state may file a birth certificate upon submitting proof as required by the~~
19 ~~department or by any court. If a certificate of birth for a person born in this state has not been filed within~~
20 1 year of the birth, a delayed certificate of birth may be filed in accordance with rules adopted by the
21 department. A delayed certificate of birth may not be registered until the requirements regarding facts
22 pertaining to the delayed certificate, as specified by rule, have been met.

23 (b) A birth of a person in this state whose name has not been registered within 1 year after the
24 birth must be registered on a delayed certificate of birth form. The delayed certificate must contain the date
25 of registration and a summary statement of the information submitted to explain the delayed registration.

26 (c) A delayed certificate of birth may not be registered for a deceased person.

27 (d) The department may not register a delayed certificate of birth if an applicant for a delayed
28 certificate of birth does not submit the minimum documentation required by rule for delayed registration
29 or if the department has cause to question the validity or adequacy of the applicant's sworn statement or
30 the documentation provided to establish the facts and the deficiencies are not corrected. The department

1 shall advise the applicant of the reasons for the refusal to register the delayed certificate of birth. The
2 department shall advise the applicant of the right to seek an order from a court of competent jurisdiction
3 to obtain registration of the delayed certificate of birth as provided in [section 13].

4 (e) The department may, by rule, provide for the dismissal of an application for registration of a
5 delayed certificate of birth that is not actively pursued.

6 (2) A person may amend a birth, death, or fetal death certificate upon submitting proof as required
7 by the department.

8 (3) If birth certificates ~~are accepted 6 months or more after the time prescribed for filing or~~ are
9 altered by the department after filing, the certificate ~~shall~~ must show the date of the ~~delayed filing or~~
10 alteration and the mark "~~delayed~~" or "altered". A summary statement of the evidence in support of the
11 ~~delayed filing or~~ alteration ~~shall~~ must be endorsed on the certificate.

12 (4) The probative value of a "delayed" or "altered" certificate of birth is determined by the judicial
13 or administrative body before whom the certificate is offered as evidence."
14

15 NEW SECTION. Section 13. Judicial birth facts procedure. (1) If the department declines to
16 register a certificate of birth under the provisions of 50-15-204 or [section 11], a petition signed and sworn
17 to by the petitioner may be filed with the district court, seeking an order establishing a record of the date
18 and place of the birth and the parentage of the person whose birth is to be registered.

19 (2) The petition must be made on a form adopted or approved by the department and must allege:

20 (a) that the person for whom a certificate of birth is sought was born in this state;

21 (b) that a certificate of birth of the person cannot be found at the department or at the office of
22 the clerk and recorder;

23 (c) that diligent efforts by the petitioner have failed to obtain the evidence to establish entitlement
24 to a certificate of birth required in accordance with this chapter and rules adopted pursuant to this chapter;

25 (d) that the department has declined to file a certificate of birth; and

26 (e) other allegations as may be required by law.

27 (3) The petition must be accompanied by all documentary evidence that was submitted to the
28 department in support of the applicant's registration and by a statement of the reasons why the department
29 declined to register the certificate of birth.

30 (4) The district court shall fix a time and place for hearing the petition and shall give the department

30 days' notice of the hearing. The department through its authorized representative shall appear and testify as a witness in the proceeding if determined necessary by the court.

(5) If the district court finds, from the evidence presented, that the person for whom a certificate of birth is sought was born in this state, it shall make findings as to the date and place of birth, parentage, and other relevant facts and shall issue an order establishing the certificate of birth. The order must include the findings and birth data to be registered, a description of the evidence presented, and the date of the court's action.

(6) The clerk of the court shall forward the order referred to in subsection (5) to the department not later than the 10th calendar day of the month following the month in which it was entered. The order must be registered by the department and constitutes the court-ordered certificate of birth.

NEW SECTION. Section 14. Certificates of birth following adoption, legitimation, or determination or acknowledgment of paternity. (1) The department shall establish a new certificate of birth for a person born in this state when the department receives the following:

(a) a certificate of adoption, as provided in [section 16], a certificate of adoption prepared and filed in accordance with the laws of another state or foreign country, or a certified copy of the decree of adoption, together with the information necessary to identify the original certificate of birth and to establish a new certificate of birth; or

(b) a request that a new certificate be established if the request shows that:

(i) the person has been legitimated;

(ii) a district court has determined the paternity of the person; or

(iii) both parents have acknowledged the paternity of the person and request that the surname be changed from that shown on the original certificate.

(2) The date of birth and the city and county of birth must be stated in the newly established certificate of birth. The department shall substitute the new certificate of birth for the original certificate of birth in the files. The original certificate of birth and the evidence of adoption, legitimation, court determination of paternity, or paternity acknowledgment may not be subject to inspection, except upon order of a district court, as provided by rule, or as otherwise provided by state law.

(3) Upon receipt of a report of an amended decree of adoption, the department shall amend the certificate of birth as provided in rules adopted by the department.

1 (4) Upon receipt of a report or decree of annulment of adoption, the department shall restore the
2 original certificate of birth issued before the adoption to its place in the files and the certificate of birth
3 issued upon adoption and evidence pertaining to the adoption proceeding may not be open to inspection,
4 except upon order of a district court or as provided by rule adopted by the department.

5 (5) Upon written request of both parents and receipt of a sworn acknowledgment of paternity
6 signed by both parents of a child born outside of marriage, the department shall reflect the paternity on the
7 child's certificate of birth if paternity is not already shown on the certificate of birth.

8 (6) If a certificate of birth is not on file for the adopted child for whom a new certificate of birth
9 is to be established under this section and the date and place of birth have not been determined in the
10 adoption or paternity proceedings pertaining to the child, a delayed certificate of birth must be filed with
11 the department, as provided in 50-15-204, before a new certificate of birth may be established. The new
12 certificate of birth must be prepared on a form prescribed by the department.

13 (7) When a new certificate of birth is established by the department, the department may direct
14 that all copies of the original certificate of birth in the custody of any other custodian of vital records in this
15 state either be sealed from inspection or be forwarded to the department for sealing from inspection.

16 (8) (a) The department shall, upon request of the adopting parents, prepare and register a
17 certificate of birth in this state for a person born in a foreign country who is not a citizen of the United
18 States and who was adopted through a district court in this state.

19 (b) The certificate of birth must be established by the department upon receipt of a certificate of
20 adoption, conforming to the requirements of [section 16], from the court that reflects entry of an order of
21 adoption, proof of the date and place of the child's birth, and a request for the establishment of a certificate
22 of birth from the court, the adopting parents, or the adopted person, if the person is 18 years of age or
23 older.

24 (c) The certificate of birth must be labeled "Certificate of Foreign Birth" and must contain the actual
25 country of birth. A statement must be included on the certificate indicating that it is not evidence of United
26 States citizenship for the child for whom it is issued.

27 (d) After registration of the certificate of birth in the new name of the adopted person, the
28 department shall seal and file the certificate of adoption, which is not subject to inspection, except upon
29 order of the district court, as provided by rule, or as otherwise provided by state law.

30 (9) The department may promulgate rules necessary to implement this section.

1 **Section 15.** Section 50-15-303, MCA, is amended to read:

2 **"50-15-303. Certificates of dissolution of marriage, ~~adoption, or~~ declaration of invalidity of**
3 **marriage, ~~or annulment of adoption.~~** Before the 10th day of each month, the clerk of the court shall prepare
4 and forward to the department a certificate for each decree of dissolution of marriage, ~~adoption, or~~
5 declaration of invalidity of marriage, ~~or annulment of adoption~~ that became final during the preceding
6 calendar month. Certificates ~~shall~~ must be on forms prescribed by the department."

7
8 **NEW SECTION. Section 16. Certificates of adoption or annulment of adoption -- report of amended**
9 **or annulled adoption decree.** (1) For each adoption decreed by a district court, the decree must require
10 the clerk of the court to prepare a certificate of adoption on a form prescribed and furnished by the
11 department. The certificate of adoption must include facts that are necessary to locate and identify the
12 certificate of birth of the person adopted or, in the case of a person who was born in a foreign country,
13 evidence from sources determined to be reliable by the district court as to the date and place of birth of
14 the person. The certificate of adoption must also contain information necessary to establish a new
15 certificate of birth for the person adopted and must identify the order of adoption. The clerk of the court
16 shall certify the certificate of adoption.

17 (2) Information necessary for the clerk of the court to prepare the certificate of adoption must be
18 furnished, by each petitioner for adoption on a form prescribed by the department, at the time that the
19 petition for adoption is filed. A person or agency having knowledge of facts, as described in subsection
20 (1), may be required by the court to supply the court with information necessary to complete the certificate
21 of adoption. The district court may make the provision of the information for the preparation of a certificate
22 of adoption a prerequisite to the issuance of a final decree.

23 (3) Whenever an adoption decree is amended or annulled, the clerk of the court shall prepare a
24 report. The report must include the facts that are necessary to identify the original certificate of adoption
25 and the facts amended in the adoption decree that are necessary to properly amend the birth record.

26 (4) No later than the 16th day of each calendar month or more frequently, as directed by the
27 department, the clerk of the court shall forward to the department certificates of adoption, reports of
28 annulment of adoption, and amendments of decrees of adoption that were entered in the preceding month,
29 together with any related reports required by the department.

30 (5) When the department receives a certificate of adoption, report of annulment of adoption, or

1 amendment of a decree of adoption for a person born outside this state, the department shall forward the
2 certificate, report, or amendment to the state registrar or the agency charged with registering vital statistics
3 in the state where the person was born.

4 (6) If the birth of an adopted child occurred in a foreign country and the adopted child was not a
5 citizen of the United States at the time of birth, the department shall prepare a "Certificate of Foreign Birth"
6 as required by [section 14]. If the adopted child was born in Canada, the department shall send a copy of
7 the certificate of adoption, report of annulment of adoption, or amendment of a decree of adoption to the
8 appropriate registration authority in Canada.

9 (7) If the adopted child born in a foreign country was a citizen of the United States at the time of
10 birth, the department may not prepare a "Certificate of Foreign Birth" and shall notify the adoptive parents
11 of the procedures for obtaining a revised certificate of birth for their child through the United States
12 department of state.

13 (8) A deceased person cannot be adopted.

14

15 **Section 17.** Section 50-15-403, MCA, is amended to read:

16 **"50-15-403. Preparation and filing of death or fetal death certificate.** (1) A person in charge of
17 disposition of a dead body or fetus shall obtain personal data on the deceased or, in the case of a fetal
18 death, on the parents that is required by the department from persons best qualified to supply the data and
19 enter it on the death or fetal death certificate.

20 (2) The person in charge of disposition of the dead body or fetus shall present the death certificate
21 to the certifying physician or the coroner having jurisdiction for medical certification of the cause of death.
22 The person in charge of disposition shall obtain the completed certification of the cause of death from the
23 physician or coroner and shall, within the time that the department may by rule prescribe, file the death or
24 fetal death certificate with the local registrar in the registration area where the death occurred.

25 (3) A fetal death certificate is not required to be filed for a fetus of less than 350 grams at death
26 or, if the weight is unknown, for a fetus that has not reached 20 completed weeks of gestation at death."

27

28 **Section 18.** Section 50-15-405, MCA, is amended to read:

29 **"50-15-405. Authorization for removal of body from place of death.** (1) Except as provided in
30 subsection (2), a dead body may be removed from the place of death only upon the written authorization

1 or oral authorization, which must be reduced to writing within 24 hours, of the physician in attendance at
2 death or the physician's designee, the coroner having jurisdiction, or a mortician licensed under 37-19-302.

3 (2) If the death requires inquiry under 46-4-122, the written authorization may only be granted by
4 the coroner having jurisdiction or the coroner's designee or by the state medical examiner if the coroner
5 fails to act. However, when the only reason for inquiry under 46-4-122 is that the body is to be cremated,
6 the coroner may grant oral authorization for ~~removal~~ cremation of the body, which must be reduced to
7 writing as specified under subsection (1) by the coroner.

8 (3) The written authorization to move a dead body or, when applicable, to cremate a dead body
9 must be made in ~~triplicate~~ quadruplicate on a form provided by the department. The person in charge of
10 disposition of the dead body, the coroner having jurisdiction, and the local registrar must each be provided
11 with and retain a copy of the authorization. A fourth copy may accompany the body to final disposition,
12 as necessary.

13 (4) A written authorization issued under this section permits removal, transportation, and final
14 disposition of a dead body."

15
16 **Section 19.** Section 50-16-542, MCA, is amended to read:

17 **"50-16-542. Denial of examination and copying.** (1) A health care provider may deny access to
18 health care information by a patient if the health care provider reasonably concludes that:

19 (a) knowledge of the health care information would be injurious to the health of the patient;

20 (b) knowledge of the health care information could reasonably be expected to lead to the patient's
21 identification of an individual who provided the information in confidence and under circumstances in which
22 confidentiality was appropriate;

23 (c) knowledge of the health care information could reasonably be expected to cause danger to the
24 life or safety of any individual;

25 (d) the health care information was compiled and is used solely for litigation, quality assurance,
26 peer review, or administrative purposes;

27 (e) the health care information might ~~disclose birth out of wedlock or provide information from~~
28 ~~which knowledge of birth out of wedlock might be obtained and which~~ contain information is protected
29 from disclosure pursuant to ~~50-16-206~~ sections 7 and 8;

30 (f) the health care provider obtained the information from a person other than the patient; or

1 (g) access to the health care information is otherwise prohibited by law.

2 (2) Except as provided in 50-16-521, a health care provider may deny access to health care
3 information by a patient who is a minor if:

4 (a) the patient is committed to a mental health facility; or

5 (b) the patient's parents or guardian ~~have~~ has not authorized the health care provider to disclose
6 the patient's health care information.

7 (3) If a health care provider denies a request for examination and copying under this section, the
8 provider, to the extent possible, shall segregate health care information for which access has been denied
9 under subsection (1) from information for which access cannot be denied and permit the patient to examine
10 or copy the ~~disclosable~~ information subject to disclosure.

11 (4) If a health care provider denies a patient's request for examination and copying, in whole or
12 in part, under subsection (1)(a) or (1)(c), ~~he~~ the provider shall permit examination and copying of the record
13 by another health care provider who is providing health care services to the patient for the same condition
14 as the health care provider denying the request. The health care provider denying the request shall inform
15 the patient of the patient's right to select another health care provider under this subsection."
16

17 NEW SECTION. Section 20. Repealer. Sections 50-15-110, 50-15-112, 50-15-113, 50-15-201,
18 50-15-205, and 50-15-206, MCA, are repealed.
19

20 NEW SECTION. Section 21. Codification instructions. (1) [Sections 7 through 10] are intended
21 to be codified as an integral part of Title 50, chapter 15, part 1, and the provisions of Title 50, chapter 15,
22 part 1, apply to [sections 7 through 10].

23 (2) [Sections 11, 13, and 14] are intended to be codified as an integral part of Title 50, chapter
24 15, part 2, and the provisions of Title 50, chapter 15, part 2, apply to [sections 11, 13, and 14].

25 (3) [Section 16] is intended to be codified as an integral part of Title 50, chapter 15, part 3, and
26 the provisions of Title 50, chapter 15, part 3, apply to [section 16].
27

28 NEW SECTION. Section 22. Severability. If a part of [this act] is invalid, all valid parts that are
29 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its
30 applications, the part remains in effect in all valid applications that are severable from the invalid

1 applications.

2

3 NEW SECTION. Section 23. Effective date. [This act] is effective January 1, 1996.

4

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0089, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

A bill to generally revise vital statistics laws to standardize procedures and to conform to national standards; to clarify information available from the system of vital statistics; to revise laws governing certificates of adoption; and to revise standards for preserving vital records.

ASSUMPTIONS:

1. The Executive Budget contains funding for the Vital Records and Statistics Bureau contained in the Department of Health and Environmental Sciences (DHES). Costs estimated for this fiscal note are those estimated to be above or below the level of funding contained in the present law base in the Executive Budget.
2. This legislation will become effective January 1, 1996.
3. Necessary rules will be promulgated prior to the effective date and cost of promulgation will be absorbed by the present law base budget.
4. Under current law and rules a fee of \$10.00 is charged for a certified copy of a vital record or for a search of files when a copy is not issued. This fee is to recover actual costs for services provided. The cost of providing these services is not the same for each of the services listed. This bill will permit the department to set realistic service-specific fees. Sufficient information is not available at this time to estimate the impact on revenue.
5. In order to comply with these uniformity and security requirements, an unknown number of county Clerk and Recorder offices may have to purchase a more secure paper for the issuance of certified copies of vital records. Information is not available to estimate the increase in operational budgets of affected county offices.

FISCAL IMPACT:

Net Impact: As indicated in assumption 4 above, there may be some fiscal impact related to restructuring fees based on actual costs of services. At this time, the department has insufficient information to determine the fiscal impact.

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

Some county Clerk and Recorder offices may incur a cost to purchase special paper to comply with the security and uniformity requirements for issuance of certified copies of vital statistics. The department does not have sufficient information on the volume or type of paper used by each county Clerk and Recorder office to provide a specific estimate of the expenditure for these county offices.

 1-10-95
DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

 1/10/95
RAY PECK, PRIMARY SPONSOR DATE

Fiscal Note for HB0089, as introduced

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON HUMAN SERVICES & AGING

Call to Order: By CHAIRMAN DUANE GRIMES, on January 9, 1995, at
3:00 p.m.

ROLL CALL

Members Present:

Rep. Duane Grimes, Chairman (R)
Rep. John C. Bohlinger, Vice Chairman (Majority) (R)
Rep. Carolyn M. Squires, Vice Chairman (Minority) (D)
Rep. Chris Ahner (R)
Rep. Ellen Bergman (R)
Rep. Bill Carey (D)
Rep. Dick Green (R)
Rep. Antoinette R. Hagener (D)
Rep. Deb Kottel (D)
Rep. Bonnie Martinez (R)
Rep. Brad Molnar (R)
Rep. Bruce T. Simon (R)
Rep. Liz Smith (R)
Rep. Susan L. Smith (R)
Rep. Loren L. Soft (R)
Rep. Kenneth Wennemar (D)

Members Excused: None

Members Absent: None

Staff Present: David Niss, Legislative Council
Jacki Sherman, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: HB 89
Executive Action: None

HEARING ON HB 89

Opening Statement by Sponsor:

REP. RAY PECK, HD 41, HAVRE, said a statement of intent is
required for this bill. The legislature intends that the rules
do the following:

1. Address the process for establishing and maintaining a statewide system of vital statistics and vital records.
2. Define persons who may obtain copies of vital records and the showing necessary to obtain vital records.
3. Establish which persons may prepare or issue certified copies of certificates of birth or vital records.
4. Establish the process and scope of disclosure of information to the public and governmental agencies as well as adequate standards for security and confidentiality of vital records.
5. Establish a system for the preservation or disposal of vital records.
6. Establish the process and guidelines for registration of birth.
7. Establish the process for establishing, maintaining, or dismissing applications for delayed certificates of birth.
8. Establish forms necessary to track vital statistics by courts or other governmental entities.
9. Establish a system of issuance and maintenance of records of dissolution or annulment of marriage.
10. Establish a system of issuance and maintenance of certificates of birth, following adoption, legitimation, or establishment of paternity.
11. Establish a system for issuance and maintenance of certificates of adoption and annulment of adoption.

Proponents' Testimony:

Dale Taliaferro, Administrator, Department of Health and Environmental Sciences (DHES) stated that HB 89 changes a number of definitions to be consistent with standards being used nationally. EXHIBIT 1

Rose Hughes, Montana Funeral Directors Association, discussed the section on removing dead bodies from the place of death (MCA 50-14-405). They worked with the Department of Health and Environmental Sciences to clarify the bill. She said they also support the department on the definitions in MCA 50-15-101 since they felt these were also necessary.

Opponents' Testimony: None

Informational Testimony: None

Questions From Committee Members and Responses:

REP. CAROLYN SQUIRES asked Mr. Taliaferro what he anticipates for a fee and asked who is responsible for the birth certificate as well as the death certificate. Mr. Taliaferro answered that the current fee is \$10.

REP. SQUIRES asked Mr. Taliaferro if the fee is passed on to the consumer or is absorbed by the institution. Mr. Taliaferro replied that the person who requests the information is responsible.

REP. SQUIRES asked Mr. Taliaferro how death certificates are charged. Many institutions require death certificates at the time of death. Mr. Taliaferro answered that certificates would be charged per copy.

REP. SQUIRES asked Mr. Sam Sperry, Chief, Bureau of Vital Records and Statistics if he expects the fee to increase at the hospital level from \$10. Mr. Sperry replied that the fees the department has charged for certified copies of both birth and death certificates are to the individual or the institution, whomever requests it.

REP. SQUIRES asked Mr. Sperry if there is a fee charged when a child is born and is the ten dollar fee charged to the patient. Mr. Sperry replied that the hospital would complete a birth certificate. Then the hospital would give the mother a green copy of the certificate which is the parents' verification of the birth information to be filed. The parents have one year from the baby's birthdate to verify the information and correct any errors on the birth certificate.

REP. BRUCE SIMON asked Mr. Sperry if MCA 50-15-102 gives the department the authority to amend preserving vital statistics and asked about the level of authority. "You are the place for all information on vital statistics. Your statistics also depend on the accuracy of the certificates that are filed within your department. If the department had reason to believe the statistics are incorrect, would you get corrections made by not accepting the certificates and returning them to get the corrections made?"

Mr. Sperry replied that they have not initiated a request to amend a filed document with the department. They do accept affidavits for corrections to the certificates upon face value. The reason they are asking for rule-making authority with respect to amending, is they haven't had that before. "I am hoping that through the rule-making process that we can clarify at what point and what procedures the department will follow."

REP. SIMON told Mr. Sperry that the committee wants to make sure that the data is accurate, and if not, then the record will be made right. Mr. Sperry replied that is their intent.

REP. SIMON asked David Niss, Legislative Council, about language in the bill referring to issuance of a certified copy of a record. There have been several instances where one certified copy is not enough. He asked if they should say "copy" or "copies" to make it clear that people can request more than one copy. Mr. Niss answered that there is a general section in Title 1 of MCA which says that any use of a singular word can be understood to also be the use of a plural word or vice-versa. The problem with this example is someone trying to get copies or trying to invoke a section of the statutes that the person in charge of the copies has probably never seen or heard of, and so, while technically it may not be exactly required because of that statute, it might be a good idea here should the situation arise.

REP. JOHN BOHLINGER told Mr. Taliaferro they understand what the department is attempting to accomplish, agree with its intent, and feel it is useful to standardize language. He cited MCA 50-15-102 that uses "shall" and then uses "may". He said there is a big difference between these two words and they should be consistent and in agreement. Mr. Taliaferro said that makes sense.

REP. BILL CAREY inquired about MCA 50-16-542 and stated that a health care provider may deny a patient access to health care information if he feels it would be injurious to the patient's health. He asked Mr. Taliaferro for an example of this. Mr. Taliaferro replied that it is existing law and this often occurs with mental patients.

REP. DEB KOTTEL asked Mr. Taliaferro with regard to MCA 50-15-101, section 3, sub (8), if a woman gives birth to an illegitimate child, then marries the child's father ten years later, would that child be considered legitimate. Mr. Taliaferro answered yes.

REP. KOTTEL asked Katherine Orr, Chief Counsel, Department of Health, if there is an equal protection clause that determines legitimate and illegitimate children. She said while searching for this, it could not be found. She wondered why they are defining "legitimate" and "illegitimate" in this bill. Ms. Orr replied that section 14 of this bill talks about legitimation, or determination or acknowledgement of paternity. The process of legitimation is acknowledged in the current law (Title 40).

REP. KOTTEL asked Ms. Orr if the different ways of entering into marriage in Montana creates a problem when determining the exact date of legitimacy. She said the exact date which the couple may be deemed a "common law" marriage is often not known. Ms. Orr replied that this is not a problem. This bill and existing law provide ways to amend these vital records.

REP. KOTTEL told Mr. Sperry a story about a mother who was upset about the forms she had to fill out. There appears to be both a long form and a short form birth certificate in Montana. The long

form is for legitimate children and the short form is given to parents with illegitimate children. Her child was born out of wedlock and when she requested the long form she was denied. She was told that the long form is only for those children whose parents were married at the time of birth.

Mr. Sperry answered that one of the statutes they want to repeal is MCA 50-15-206, which has been in effect since at least 1968. The above statute directs that facts about out-of-wedlock births cannot be divulged, except under order of the court, and a few other exceptions. They have also dictated in statutes that a mother of an out-of-wedlock birth certainly should have unobstructed access to a full copy of the child's birth certificate. The long form was brought about to truly identify the birth mother. He said they ask for identification and the long form must be notarized. They are hoping that the whole question of identifying out-of-wedlock births will be moved from Montana in the future.

Tape 1 - Side B

REP. KOTTEL asked Mr. Sperry, in reference to MCA 50-15-403, sub (3), if prior to this change second trimester abortions were recorded as fetal deaths. Mr. Sperry answered that it depended upon the circumstances of the fetal death. If a fetus is aborted in a clinic within the first trimester, or an induced abortion occurs in the second trimester in a hospital, it is an induced abortion and not a fetal death. If a non-induced or spontaneous abortion occurs in a hospital or in second trimester, it should be reported. The abortion control act in Montana (Title 50, Chapter 20) still requires that an induced abortion is reported as such. This distinguishes only hospital fetal deaths that should be reported.

REP. LIZ SMITH expressed to Mr. Sperry her concern about the amendments to MCA 50-15-101, Section 3, regarding intent and since it is a legal document, persons should be qualified to do this. Mr. Sperry replied that amending means changes are made only under a legal process. Otherwise, they are referred to as "corrections," as long as it does not change the substantive legality of the record.

REP. LIZ SMITH asked Ms. Hughes in reference to MCA 50-15-405, Section 18, why they use "may" instead of "shall" and why the word "shall" was removed. Ms. Hughes answered that there used to be a burial transit form that had to be filled out, but was removed. The form can be used, but is not mandatory.

REP. SIMON added that funeral directors couldn't transport a body across county lines in the middle of the night without paperwork, and that created a problem.

CHAIRMAN GRIMES cited MCA 50-15-101, Section 3, sub (5), and read the new language regarding fetal death: "Death of the fetus prior

to the complete expulsion or extraction from its mother as a product of human conception, notwithstanding the duration of the pregnancy." He asked Mr. Sperry to explain what they want to resolve with this new language, and why it's necessary as opposed to artificial conception. Mr. Sperry replied that for many years they tried to define "fetal death" by how many weeks old the fetus was at the time of death. At the recommendation of the National Center for Health Statistics, if a fetal death occurred at less than 20 weeks and the fetus was of very little birth weight (350-500 grams) they wanted it reported for statistical purposes.

CHAIRMAN GRIMES asked Ms. Orr to clarify Section 16. This section refers to reports that are required and adoptions have certain requirements. He asked what this would do to the adoption process. Ms. Orr responded that Title 40 stipulates the required reports.

REP. KOTTEL asked Mr. Sperry if "invitro" fertilization occurred and the fertilized egg were to die in the test tube, would that not be a fetal death because it would not have been a normal "human conception." Mr. Sperry answered that they don't know the answer and haven't considered that question before.

Closing by Sponsor:

REP. RAY PECK, said there are conflicts in MCA 50-15-102 between "shall" on one line and "may" on another. Perhaps "may" should be dropped. He has a lot of confidence in these amendments and he asked the committee to seriously consider them.

HOUSE OF REPRESENTATIVES

Human Services and Aging

ROLL CALL

DATE 1-9-95

NAME	PRESENT	ABSENT	EXCUSED
Rep. Duane Grimes, Chairman	✓		
Rep. John Bohlinger, Vice Chairman, Majority	✓		
Rep. Carolyn Squires, Vice Chair, Minority	✓		
Rep. Chris Ahner	✓		
Rep. Ellen Bergman	✓		
Rep. Bill Carey	✓		
Rep. Dick Green	✓		
Rep. Toni Hagener	✓		
Rep. Deb Kottel	✓		
Rep. Bonnie Martinez	✓		
Rep. Brad Molnar	✓		
Rep. Bruce Simon	✓		
Rep. Liz Smith	✓		
Rep. Susan Smith	✓		
Rep. Loren Soft	✓		
Rep. Ken Wennemar	✓		

EXHIBIT 1
DATE 1/9/95
HB HB 89

Department of Health & Environmental Sciences
Testimony on HB 8~~8~~⁹ - Revise Vital Statistics Law
for
House Human Services and Aging Committee
January 9, 1995

Submitted by Dale Taliaferro

The Department is requesting this Bill to make a number of improvements in the Vital Records and Statistics system for Montana.

House Bill 8~~8~~⁹ clarifies responsibilities for the Department in collecting, maintaining and providing access to Vital Records and Statistical Information based on those records. It provides flexibility in how those responsibilities are carried out so modern technology can be used to reduce labor and increase efficiency in record maintenance and access.

The bill changes a number of definitions to be consistent with standards being used nationally.

It also provides rule making authority for operational procedures of the records system and for setting charges for services. Currently a flat fee of \$10 is charged regardless of the actual expense of the service. Some services should be much less and some would be slightly higher. Currently there is not a limit on fees, so this is a change to a cost based fee system and is expected to be revenue neutral.

If you have questions about specifics of the Bill or want an overview of the specific provisions, Sam Sperry, Bureau Chief of Vital Records and Health Statistics is present to answer your questions.

HOUSE OF REPRESENTATIVES
VISITORS REGISTER

Human Services 3 Aging

DATE 1-9-95

BILL NO. HB 89

SPONSOR(S) Ray Peck

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	Support	Oppose
^{1407 Reg. Club} Diane Williams Helms	League of Women Voters		
Dale Talisfero	MT DHE S	✓	
Rose Hughes, Helms	mt. Funeral Directors Assn.	✓	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HR:1993

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CS-14

REP. L. SMITH stated that no matter how the parties were trying to work out the problem within themselves the rights of the department were not reduced. Ms. Wellbank said that wasn't a case where the AFDC recipients were referred to the department, so the state has a financial interest.

REP. L. SMITH asked if there were other states that were adopting similar types of statutes. Ms. Wellbank said she wasn't sure which states were doing this, but that any time child support is assigned to the state, the state needs to act to protect its rights.

REP. SIMON asked Ms. Pfeiffer what special circumstances might arise to breach confidentiality in the opinion of the hearings officer. She described the scenario in which a mother alleges that a certain man is the father and he tells the department that he did have intercourse with her at that time and may be the father. He might sign an acknowledgment of paternity and they would enter an order saying that he is the father. A few years later, another man comes forward and thinks he may be the father. This man was not part of the original action and he can't get any information. That man may ask the court to give him an order opening those records.

Closing by Sponsor:

REP. ROYAL JOHNSON stated that he thought the purpose of the bill was to help the department do the job that the legislature asked them to do. If a person is paying their support that is fine but if they are not then the law is needed with as few barriers as possible.

{Tape: 2; Side: B; Approx. Counter: 225; Comments: n/a.}

EXECUTIVE ACTION ON HB 89

Motion/Vote: REP. BRAD MOLNAR MOVED TO TABLE HB 89. The motion carried unanimously.

EXECUTIVE ACTION ON HB 318

Motion: REP. JOHN BOHLINGER MOVED THAT HB 318 DO PASS. HE THEN MOVED THAT THE AMENDMENTS TO HB 318 DO PASS.

Discussion:

REP. BOHLINGER said that he and REP. BRUCE SIMON agreed that the amendments were necessary to address the concerns of the institution that they may apply for more than one permit.

Vote: Voice vote was taken. The motion carried unanimously.

HOUSE OF REPRESENTATIVES

Human Services and Aging

ROLL CALL

DATE 2-6-95

NAME	PRESENT	ABSENT	EXCUSED
Rep. Duane Grimes, Chairman	✓		
Rep. John Bohlinger, Vice Chairman, Majority	✓		
Rep. Carolyn Squires, Vice Chair, Minority		✓	
Rep. Chris Ahner	✓		
Rep. Ellen Bergman	✓		
Rep. Bill Carey		✓	
Rep. Dick Green	✓		
Rep. Toni Hagener	✓		
Rep. Deb Kottel	✓		
Rep. Bonnie Martinez	✓		
Rep. Brad Molnar	✓		
Rep. Bruce Simon	✓		
Rep. Liz Smith	✓		
Rep. Susan Smith	✓		
Rep. Loren Soft	✓		
Rep. Ken Wennemar	✓		

Motion: REP. BERGMAN MOVED TO INCLUDE A TWO-YEAR SUNSET ON THIS PROGRAM.

Discussion:

Mr. Niss asked if the time limit applied to the program or on each recipient.. She replied that it would apply to each recipient.

REP. LIZ SMITH said to her the eligibility criteria is 100% of poverty and if they stay in the work force, they should have increased wages, and would gradually move themselves off the program. She asked if there should be a limit.

REP. BERGMAN stated they would then remain on welfare forever.

Vote: Voice vote on the Bergman amendment was taken. The motion failed 6-7.

Vote: A roll call vote was taken. The motion carried 9-6 with REP. BERGMAN, GREEN, MARTINEZ, MOLNAR, S. SMITH, and SOFT voting no.

{Tape: 4; Side: A; Approx. Counter: 668; Comments: n/a.}

EXECUTIVE ACTION ON HB 89

Discussion:

REP. SOFT said he received calls from people in genealogical research who had concerns about the availability of records and he was provided with information as he entered the meeting. He asked for more time to review the materials.

REP. SIMON stated he was acting as temporary chair since CHAIRMAN GRIMES and both vice chairmen are absent.

REP. MOLNAR asked if he would be presenting the amendments from the Department.

Motion/Vote: REP. MOLNAR MOVED TO RECONSIDER HB 89. Voice vote was taken. The motion carried.

Discussion:

REP. MOLNAR explained the amendments for HB 89. He stated this was a vital statistics bill, not a social setting policy bill. He said the abortion issue is something else, the statistics that are kept are just numbers. He said the babies who died due to spontaneous abortion would each be issued a certificate of death. He discussed some issues dealing with appropriations, the forms, and data that would be collected, including information on the alleged father.

{Tape: 4; Side: B; Approx. Counter: 000; Comments: n/a.}

REP. MOLNAR said the bill did not have a bogeyman. He described the second amendment. He said currently doctors have the right to deny the distribution of medical records to individuals, and the amendments address that issue.

REP. SIMON asked REP. MOLNAR to clarify if his subcommittee was recommending these amendments and he responded that was correct.

Motion: REP. SIMON MOVED TO ADOPT THE CONCEPTUAL AMENDMENTS DRAFTED BY THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES.

Discussion:

REP. SIMON told the committee that because these are conceptual amendments, and need to be properly worded and edited by the Legislative Council, they would not be substantially changed in substance, but only in form.

Vote: Voice vote to adopt the amendments was taken. The motion carried unanimously.

REP. MOLNAR referred to REP. SOFT'S earlier statement about the reference materials, and said he had read the materials, and wondered if there was something more substantive that he wished to address, if it could be amended on the floor. REP. SOFT said that would be his recommendation.

Motion: REP. MOLNAR MOVED THAT HB 89 DO PASS AS AMENDED.

Discussion:

REP. SUSAN SMITH cited page 11, line 12, and asked why a court would be able to specify who the mother was; it says nothing about adoption and leaves it open. REP. MOLNAR said there are reasons why that might happen; they might give the baby up for adoption and want to remain anonymous, for instance. There might be a question as to who the child belongs to, in the cases of kidnapped babies, surrogate mothers, etc.

Vote: Voice vote was taken. The motion carried 12 - 5 with REPS. SOFT, LIZ SMITH, SUSAN SMITH, MARTINEZ, and GREEN voting no.

CHAIRMAN GRIMES returned to the meeting and assumed the chair. He thanked REP. MOLNAR, REP. KOTTEL, and REP. BERGMAN for their work on the subcommittee for HB 89.

{Tape: 4; Side: B; Approx. Counter: 297; Comments: Meeting adjourned.}

HOUSE OF REPRESENTATIVES

Human Services and Aging

ROLL CALL

DATE 2/8/95

NAME	PRESENT	ABSENT	EXCUSED
Rep. Duane Grimes, Chairman	✓		
Rep. John Bohlinger, Vice Chairman, Majority			✓
Rep. Carolyn Squires, Vice Chair, Minority	✓		
Rep. Chris Ahner	✓		
Rep. Ellen Bergman	✓		
Rep. Bill Carey	✓		
Rep. Dick Green	✓		
Rep. Toni Hagener	✓		
Rep. Deb Kottel	✓		
Rep. Bonnie Martinez	✓		
Rep. Brad Molnar	✓		
Rep. Bruce Simon	✓		
Rep. Liz Smith	✓		
Rep. Susan Smith	✓		
Rep. Loren Soft	✓		
Rep. Ken Wennemar	✓		



HOUSE STANDING COMMITTEE REPORT

February 10, 1995

Page 1 of 4

Mr. Speaker: We, the committee on Human Services and Aging report that House Bill 89 (first reading copy -- white) do pass as amended.

Signed: _____

Duane Grimes, Chair

And, that such amendments read:

1. Page 3, line 18.

Strike: "human"

2. Page 3, lines 27 and 28.

Strike: subsection 8 in its entirety

Renumber: subsequent subsections

3. Page 3, line 30.

Strike: "human"

4. Page 4, line 7.

Following: "~~person~~"

Insert: "person who places or causes to be placed a dead body or the ashes after cremation in a grave, vault, urn, or other receptacle or otherwise disposes of the body or fetus and who is a"

5. Page 4, lines 9 and 10.

Strike: "and" on line 9 through "or fetus" on line 10

Committee Vote:
Yes 6, No 5.

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6. Page 4, lines 29 and 30.

Strike: "The department" on line 29 through "statistics." on line 30

7. Page 5, lines 12 and 13.

Strike: subsection (4) in its entirety

Renumber: subsequent subsections

8. Page 6, line 6.

Strike: "modernization and automation"

Insert: "administration"

9. Page 6, line 10.

Following: "copy"

Insert: "or copies"

10. Page 7, lines 10 and 11.

Strike: "and is" on line 10 through "the original" on line 11

11. Page 8, line 3.

Strike: the first ", "

Insert: "or"

12. Page 8, line 4.

Strike: "or copy of a vital record,"

13. Page 9, line 14.

Following: "duties."

Insert: "The department shall, upon request by the department of social and rehabilitation services, the department of family services, or a licensed adoption agency, provide a birth certificate and related records for purposes of adoption, termination of parental rights, custody actions, paternity actions, child support actions, social security eligibility determinations, or Indian tribal enrollment determinations."

14. Page 9, lines 26 and 27.

Strike: ", and the documents" on line 26 through "rule" on line 28

Insert: ". The department shall maintain original vital records

intact and in their original form on file at the department"

15. Page 10, line 27.

Strike: "(4)(f)"

Insert: "(4)(e)"

16. Page 10, line 28.

Following: "designee"

Insert: "or a midwife licensed pursuant to Title 37, chapter 27,"

17. Page 11, line 2.

Following: ";

Insert: "or"

18. Page 11, line 3.

Strike: subsection (f) in its entirety

Renumber: subsequent subsection

19. Page 13, line 6.

Strike: "A person"

Insert: "The department or its designee"

20. Page 13.

Following: line 7

Insert: "(3) The department shall adopt rules establishing the
circumstances under which vital records may be corrected or
amended and the procedure to correct or amend those
records."

Renumber: subsequent subsections

21. Page 14, line 20.

Strike: subsection (i) in its entirety

Renumber: subsequent subsections

22. Page 15, line 5.

Following: "acknowledgment"

Insert: "and other credible evidence"

23. Page 16, lines 11 and 12.

Strike: "the" on line 11 through "adopted" on line 12

Insert: "the date and place of birth of the adopted person"

24. Page 16, line 13.

Following: "by"

Insert: "the patient's spouse, adult children, parents, or"

-END-

Closing by Sponsor:

REP. GRINDE said the people who testified are from all areas of government who are interested in HB 273. He said there have been concerns raised that once legislators are elected in November, they should act immediately as people don't want to wait a year or 14 months to see what the legislative body is going to do.

REP. GRINDE said he believes the campaigning issue is something that can be worked out. REP. GRINDE discussed amending HB 273 to somehow include a mechanism that would allow returning to odd-year sessions without having to change the Constitution if even-year sessions did not work. He said, however, any amendment that would provide for that must not appear to be a move to annual sessions, as that is what killed the bill before.

REP. GRINDE added that, mathematically, HB 273 needs to go to the floor of the Senate. He said it received 87 votes in the House, and under rules, anything that has a chance of reaching 100 votes has to go to the floor.

CHAIRMAN HARDING closed the Hearing on HB 273.

{Tape: 1; Side: B; Approx. Counter: 50.3}

HEARING ON HB 89Opening Statement by Sponsor:

REP. RAY PECK, House District 91, Havre, said HB 89 is an executive branch bill. HB 89 is not a federal mandate bill, it implements and attempts to standardize reporting important in terms of census information among the states. HB 89 also has nothing to do with abortion, but it does define the question of fetal death and live birth. There is a section on page 5 which deals with fees and states fees may be set by "rule." HB 89 repeals six sections and adds nine sections.

Proponents' Testimony:

Sam Sperry, Bureau Chief of the Vital Records and Health Statistics Bureau with the Department of Health and Environmental Sciences, submitted written testimony which he essentially read verbatim (EXHIBIT 3).

George Hoff, Montana Genealogy Society, said they support HB 89 said the Montana State Society and the Lewis & Clark County Society have worked closely with Mr. Sperry. They don't object to section 6 regarding fees, and they understand how the fees may vary.

Jess Long, citizen, and member of Lewis & Clark Genealogy Society, stated support for HB 89.

Robert Throssell, Montana Association of Clerk & Recorders, stated they had initially been concerned regarding language in new section 7 in HB 89 regarding certified copies being required to contain security features. He said the cost and access to security paper makes its use prohibitive. Mr. Throssell said that agreement has been reached where counties will be able to obtain security paper through the state, so their concerns have been addressed, and they support HB 89.

George Hoff, added to his previous testimony that many of the queries they receive are from people asking for research on relatives for medical reasons.

Opponents' Testimony: None.

Questions From Committee Members and Responses:

SEN. BROOKE asked Sam Sperry what has been changed in new section 11 regarding birth registration. Mr. Sperry stated change in that section dealt more with clarification of issues on who is required to file birth certificates.

SEN. BROOKE asked what has been the procedure in Montana regarding paternity and how birth certificates are registered. Mr. Sperry said language has been incorporated that had been "scattered throughout Montana law."

SEN. BROOKE asked for clarification on "scattered throughout Montana law" and if that means his department was responsible for the changes in the language. Mr. Sperry said the issue surrounding paternity as reflected on the birth certificate has become rather complex, especially between procedures at the Department of Health and Child Support Enforcement. There are no changes in section 11 from what vital statistics is currently doing. He said the language is more reflective of what is found in family law, therefore it is a more uniform statement between the two agencies.

SEN. HARGROVE asked Sam Sperry if the hearings procedure in cases of fraud in new section 4 is new. Mr. Sperry said it is new and was taken primarily from the model law in vital records administration. The current law in vital statistics law does not provide the Department with any guidelines or procedures for dealing with fraudulent creation or amendment to vital records.

SEN. HARGROVE asked Sam Sperry what is the magnitude of fraudulent use of vital statistic records as related to the fiscal impact of holding hearings in such cases. Mr. Sperry said they have not considered the impact, and he only knows of two

instances in the last two years where it may have been applicable.

SEN. BROOKE asked Sam Sperry if HB 89 or any other law addresses situations where someone does not register a birth. Mr. Sperry said there is nothing in HB 89 or other current law to force people to register a birth. Current law has given the Department authority to file a birth certificate based on the best information they can collect. SEN. BROOKE asked Sam Sperry why he chose not to have that provision included with HB 89. Mr. Sperry said he doesn't know why they did not have that included in HB 89.

Closing by Sponsor:

REP. PECK said part of the purpose of HB 89 is to provide comparative data across states. Also, it will update language in the law that is outdated.

CHAIRMAN HARDING closed the Hearing on HB 89.

HEARING ON HB 404

Opening Statement by Sponsor:

REP. LINDA MCCULLOCH, House District 70, Missoula, handed out (EXHIBIT 4) which she read verbatim.

Proponents' Testimony:

Joe Kerwin, Secretary of State's office, said there are problems with the current law regarding redistricting issues. When the law was written, there was anticipation of only one election. However, because of the gubernatorial election, two elections are involved. They have proposed using averages for the number of signatures needed which will aid the Clerks & Recorders in certification procedures and citizens who are circling petitions to qualify measures.

Robert Throssell, Montana Association of Clerk & Recorders, said the transition period of redistricting adds a burden to Clerks & Recorders and election administrators, and using averages will help ease that burden.

Sue Haverfield, Flathead County Clerk & Recorder, and Legislative Chair for the Montana Association of Clerk & Recorders, stated support for HB 404.

MONTANA SENATE
1995 LEGISLATURE
STATE ADMINISTRATION COMMITTEE

ROLL CALL

DATE _____

ME 3-7-95

[illegible]

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CS-09

DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES
Testimony on HB 89 - Revise Vital Statistics Law
for

Senate State Administration Committee
March 7, 1995

Submitted by Sam H. Sperry

SENATE STATE ADMIN.
EXHIBIT NO. 3
DATE 8-3-95
BILL NO. HB 89

Current vital statistics law in Title 50, Chapter 15, was established in 1967, with some parts dating back to 1947. While the vital records and vital statistics concepts in current law have not changed dramatically, the language in current law has become outdated and cumbersome as technology and changing uses of vital records have placed new demands on and presented new opportunities for the vital statistics system of the nation.

This bill essentially brings the language in Montana law up-to-date and standardizes procedures throughout the state, thereby allowing Montana to conform to national vital statistics standards.

The department has chosen to adapt, for this bill, those parts applicable to Montana of the Model State Vital Statistics Act and Regulations recommended by the National Center for Health Statistics. There is absolutely no federal mandate involved. This model law is recommended to the States to ensure a uniform national vital statistics system.

Six sections of current law have been repealed by this bill. This was done in order to reword and combine related concepts into a more cohesive statement. Repealed sections 110, 112, 113 and 206 are incorporated into new sections 7 and 8; and repealed sections 201 and 205 are incorporated into new sections 11, 13, and 14. All other sections of this bill amend or clarify existing sections.

Section 3 amends 50-15-101, which is vital statistics definitions. Subsection (5) is a medical definition of a fetal death. Some fetal deaths are reportable as vital events. Section 17 amends 50-15-403 and sets down the criteria for which fetal deaths must be reported on Fetal Death Certificates. The Montana Abortion Control Act, 50-20 MCA, defines reportable induced abortions. The provisions of 50-20 MCA are unrelated to those of 50-15 MCA.

Section 6 amends 50-15-111, which is a "fee" statute. Currently the law provides a "flat" fee for vital records services. Experience shows that in some instances the department has charged more for services than was necessary; and in other instances, not enough. It is the intent of this section to allow the department to set fees for records service by rule in order to operate on a cost-recovery basis. This amendment is expected to be revenue neutral.

HB 89 - DHES - March 7, 1995
Senate State Administration
Page 2

This bill provides for rule making authority for operational procedures of the vital records system and the department believes that this bill will provide the tools necessary for a more efficient and uniform administration of the vital statistics system in Montana; and that it will facilitate the utilization of new technology, as it relates to records administration, without having to change our laws for the next 10-15 years.

DATE March 7 1995

SENATE COMMITTEE ON STATE ADMINISTRATION

BILLS BEING HEARD TODAY: HB273 / HB89 / HB404

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Check One

Name	Representing	Bill No.	Support	Oppose
Jane Long	Self	89	✓	
Ruth Long	L + C Anna. Soc. Self	89	✓	
George T. Hoff	mt State Genealogical Society	89	✓	
Pat Downs	Lt C. Genealogical Society	89	✓	
Naomi Smith	"	89	✓	
Fern Basso	mt. State (Self) Family History Library	89	✓	
Sam Sperry	DHES	89	✓	
Jim Jensen	METC	273	X	
Eloyce Kockler	Self	89	X	
Tom Kockler	Self	89	-	
GEORGE CHTENSKI	Self-	273	X	
Steve Brown	Self	273	X	
Deborah Smith	Common Cause	273	X	
J.V. Bennett	Mont PIRG	273	✓	

Arlette Landash VISITOR REGISTER

LAURIE Kuntz WIK CC of MT

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE _____

SENATE COMMITTEE ON _____

BILLS BEING HEARD TODAY: _____

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PLEASE PRINT

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Check One

Name	Representing	Bill No.	Support	Oppose
Ammonia Benson		89	✓	
Melty Ann Justus		89	✓	
Maria Thompson		89	✓	
Joe Kerwin	SOS	273	✓	
Joe Kerwin	SOS	404	✓	
Robert Throssell	MT Ass Cl # Rec	HB 89 HB 404	✓ ✓	
Lee Claverfield	Flackhead Co / MACR	HB 89 HB 404	✓	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

MINUTES

MONTANA SENATE
54th LEGISLATURE - REGULAR SESSION
COMMITTEE ON STATE ADMINISTRATION

Call to Order: By CHAIRMAN ETHEL HARDING, on March 13, 1995,
at 10:00 AM

ROLL CALL

Members Present:

Sen. Ethel M. Harding, Chairman (R)
Sen. Kenneth "Ken" Mesaros, Vice Chairman (R)
Sen. Mack Cole (R)
Sen. Mike Foster (R)
Sen. Don Hargrove (R)
Sen. Vivian M. Brooke (D)
Sen. Jeff Weldon (D)

Members Excused: Sen. Bob Pipinich (D)

Members Absent: N/A

Staff Present: David Niss, Legislative Council
Gail Moser, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: N/A
Executive Action: HB 89 BE CONCURRED IN AS AMENDED
HB 273 BE CONCURRED IN
HB 376 BE CONCURRED IN
HB 467 BE CONCURRED IN

{Tape: 1; Side: A; Approx. Counter: 56.}

EXECUTIVE ACTION ON HB 89

Discussion: David Niss explained to the Committee that a computer-generated conflict notice had been received which pointed out the section dealing with the availability of vital statistics on adoptions. Mr. Niss gave the secretary a new copy of the amendments as reference (EXHIBIT 1). He stated the only change is in the coordination instruction in the amendment for 40-8-126 which is also the section amended in SB 150. Mr. Niss briefly explained the coordination instruction as related to 40-8-126 and SB 150.

SEN. VIVIAN BROOKE asked if the confidentiality laws in section 2 are kept in tact. Mr. Niss said that is the section amended by the coordination instruction. SEN. BROOKE asked, without the amendment, the confidentiality in section 2 is not changed. Mr. Niss asked Senator Brooke for clarification that she meant if we don't include the coordination instruction. SEN. BROOKE responded that is correct. Mr. Niss said that with the exceptions of new sections 7 and 8, that is correct. Page 3, lines 1 and 5 are the new exceptions.

Mr. Niss said if Committee members have questions on the operation of section 7 and 8, the Bureau Chief, Sam Sperry is present and could address questions about how the exceptions operate.

Sam Sperry said that when SB 150 was first introduced, his Department worked closely with DFS and with Senator Waterman. He said the only reason his Department had amended 40-8-126 in HB 89 was because it repeals 50-15-206 and reference was made in 40-8-126 to 50-15-206, so their amendments in section 2 simply deleted that reference. Mr. Sperry said it was understood that the content of SB 150 and the concept of the confidential intermediary as interpreted in SB 150 was that the confidentiality aspects of vital records on file with the Department of Health were not affected, it dealt primarily with access to records in the possession of District Court.

SEN. BROOKE asked Sam Sperry if the section being amended by this amendment from SB 150 relates specifically to the confidential intermediary and its appointment. Mr. Sperry said that is his understanding.

CHAIRMAN HARDING asked David Niss to clarify that the Committee must adopt the amendments in order to coordinate with SB 150. Mr. Niss said that is correct.

Motion/Vote: SEN. JEFF WELDON moved TO ACCEPT AMENDMENTS TO HB 89. The MOTION CARRIED UNANIMOUSLY on oral vote.

Motion/Vote: SEN. BROOKE moved that HB 89 BE CONCURRED IN AS AMENDED. The MOTION CARRIED UNANIMOUSLY on oral vote. SEN. WATERMAN will carry the bill on the Senate floor.

EXECUTIVE ACTION ON HB 273

Motion: SEN. MIKE FOSTER moved that HB 273 BE CONCURRED IN.

Discussion: SEN. DON HARGROVE said he has several concerns regarding HB 273. He believes that many bills should be better prepared prior to the legislature going into session, but added that there may be a down side to that as well regarding freshmen being targeted by special interest groups. SEN. HARGROVE also

SENATE STANDING COMMITTEE REPORT

Page 1 of 3
March 13, 1995

MR. PRESIDENT:

We, your committee on State Administration having had under consideration HB 89 (third reading copy -- blue), respectfully report that HB 89 be amended as follows and as so amended be concurred in.

Signed: Ethel M. Harding
Senator Ethel M. Harding, Chair

That such amendments read:

1. Page 20.

Following: line 16

Insert: "NEW SECTION. Section 22. Coordination instruction. If Senate Bill No. 150 is passed and approved and if it contains a section that amends 40-8-126, then [section 2 of this act] reads as follows:

"40-8-126. Confidentiality and disclosure of record and proceedings -- appointment and duties of confidential intermediary. (1) Unless the court ~~shall~~ orders otherwise order, all hearings held in proceedings under this part ~~shall be~~ are confidential and ~~shall must~~ be held in closed court without admittance of any person other than interested parties and their counsel.

(2) All papers and records pertaining to the adoption ~~shall must~~ be kept as a permanent record of the court and withheld from inspection. ~~No A person shall may not~~ have access to ~~such the~~ records, except:

(a) for good cause shown, on order of the judge of the court in which the decree of adoption was entered;

(b) as provided in subsection (7); or

~~(b)(c)~~ as provided in 50-15-206 [sections 7 and 8].

(3) All files and records pertaining to ~~said~~ adoption proceedings in the ~~county departments of public welfare, the department of social and rehabilitation services, retained by the department of family services, or any authorized agencies shall be~~ agency are confidential and must be withheld from inspection, ~~except upon order of court for good cause shown or as provided in 50-15-206 as provided in [sections 7 and 8] and except that the department or authorized agency may disclose:~~

(a) nonidentifying information to an adoptee, an adoptive or biological parent, or an extended family member of an adoptee or biological parent; and

(b) identifying information to a court-appointed confidential intermediary upon order of the court or as provided in [sections 7 and 8].

(4) When an adoptee reaches 18 years of age, the adoptee,

SA Amd. Coord.
Sec. of Senate

WATKINSON
Senator Carrying Bill

581256SC.SPV

an adoptive or biological parent, or an extended family member of the adoptee or biological parent may petition the court for disclosure of the identity of the adoptee, biological son, biological daughter, or biological parent. A petition for disclosure must contain the following information:

- (a) the name, address, and identification of the petitioner;
- (b) the date of the adoptee's birth;
- (c) the county and state where the adoption occurred;
- (d) the date of the adoption; and
- (e) any information known to the petitioner concerning the biological parents, the adoptive parents, and the adoptee that could assist in locating the person being sought.

(5) After a petition for disclosure has been filed under subsection (4), the court shall appoint a confidential intermediary who shall:

(a) conduct a confidential search for the person sought, as requested in the petition for disclosure;

(b) refrain from disclosing directly or indirectly any identifying information to the petitioner, unless ordered to do so by the court; and

(c) make a written report of the results of the search to the court not later than 6 months after appointment.

(6) Upon appointment, a confidential intermediary is entitled to be paid a reasonable fee plus actual expenses incurred in conducting the search. The fee and expenses must be paid by the petitioner.

(7) A confidential intermediary may inspect otherwise confidential records of the court, the department, or an authorized agency for use in the search. The confidential intermediary may not disclose the contents of the records or any results of a search unless authorized by the court.

(8) If a confidential intermediary is unable to locate the person being sought within 6 months of appointment, the confidential intermediary shall recommend to the court whether a further search is warranted and state the reasons for the recommendation. If the court finds that a further search is warranted, the court may order that the search be continued for a specified time.

(9) If a confidential intermediary locates the person being sought, a confidential inquiry must be made as to whether the located person consents to having that person's present identity disclosed to the petitioner. The court may request that the confidential intermediary assist in arranging contact between the petitioner and the located person.

(10) If a confidential intermediary locates the person being sought and the located person does not consent to having that person's identify disclosed, identifying information regarding that person may be disclosed only upon order of the

court for good cause shown.

(11) If the person being sought is found to be deceased, the court may order disclosure of the identity of the deceased to the petitioner."

Renumber: subsequent sections

-END-

Amendments to House Bill No. 89
Third Reading Copy

For the Committee on State Administration

Prepared by David S. Niss
March 7, 1995

1. Page 20.

Following: line 16

Insert: "NEW SECTION. Section 22. Coordination instruction. If Senate Bill No. 150 is passed and approved and if it contains a section that amends 40-8-126, then [section 2 of this act] reads as follows:

"40-8-126. Confidentiality and disclosure of record and proceedings -- appointment and duties of confidential intermediary. (1) Unless the court shall orders otherwise order, all hearings held in proceedings under this part shall be are confidential and shall must be held in closed court without admittance of any person other than interested parties and their counsel.

(2) All papers and records pertaining to the adoption shall must be kept as a permanent record of the court and withheld from inspection. No A person shall may not have access to such the records, except:

(a) for good cause shown, on order of the judge of the court in which the decree of adoption was entered;

(b) as provided in subsection (7); or

(b)(c) as provided in 50-15-206 [sections 7 and 8].

(3) All files and records pertaining to said adoption proceedings in the county departments of public welfare, the department of social and rehabilitation services, retained by the department of family services, or any authorized agencies shall be agency are confidential and must be withheld from inspection, except upon order of court for good cause shown or as provided in 50-15-206 as provided in [sections 7 and 8] and except that the department or authorized agency may disclose:

(a) nonidentifying information to an adoptee, an adoptive or biological parent, or an extended family member of an adoptee or biological parent; and

(b) identifying information to a court-appointed confidential intermediary upon order of the court or as provided in [sections 7 and 8].

(4) When an adoptee reaches 18 years of age, the adoptee, an adoptive or biological parent, or an extended family member of the adoptee or biological parent may petition the court for disclosure of the identity of the adoptee, biological son, biological daughter, or biological parent. A petition for disclosure must contain the following information:

(a) the name, address, and identification of the petitioner;

(b) the date of the adoptee's birth;

(c) the county and state where the adoption occurred;

(d) the date of the adoption; and

(e) any information known to the petitioner concerning the

biological parents, the adoptive parents, and the adoptee that could assist in locating the person being sought.

(5) After a petition for disclosure has been filed under subsection (4), the court shall appoint a confidential intermediary who shall:

(a) conduct a confidential search for the person sought, as requested in the petition for disclosure;

(b) refrain from disclosing directly or indirectly any identifying information to the petitioner, unless ordered to do so by the court; and

(c) make a written report of the results of the search to the court not later than 6 months after appointment.

(6) Upon appointment, a confidential intermediary is entitled to be paid a reasonable fee plus actual expenses incurred in conducting the search. The fee and expenses must be paid by the petitioner.

(7) A confidential intermediary may inspect otherwise confidential records of the court, the department, or an authorized agency for use in the search. The confidential intermediary may not disclose the contents of the records or any results of a search unless authorized by the court.

(8) If a confidential intermediary is unable to locate the person being sought within 6 months of appointment, the confidential intermediary shall recommend to the court whether a further search is warranted and state the reasons for the recommendation. If the court finds that a further search is warranted, the court may order that the search be continued for a specified time.

(9) If a confidential intermediary locates the person being sought, a confidential inquiry must be made as to whether the located person consents to having that person's present identity disclosed to the petitioner. The court may request that the confidential intermediary assist in arranging contact between the petitioner and the located person.

(10) If a confidential intermediary locates the person being sought and the located person does not consent to having that person's identify disclosed, identifying information regarding that person may be disclosed only upon order of the court for good cause shown.

(11) If the person being sought is found to be deceased, the court may order disclosure of the identity of the deceased to the petitioner."

Renumber: subsequent sections